DOCUMENT RESUME

ED 389 695 SP 036 339

AUTHOR Gullatt, David E.; Tollett, John R.
TITLE Educational Law: A Relevant Course for All Teacher Education Programs.
PUB DATE Mar 95
NOTE 25p.; Paper presented at the Annual Spring Conference of the Louisiana Council of Professors of Educational Administration (Natchitoches, LA, March 29-30, 1995).
PUB TYPE Speeches/Conference Papers (150) -- Reports - Research/Technical (143) -- Tests/Evaluation Instruments (160)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Educational Legislation; Elementary Secondary Education; Higher Education; Legal Problems; Legal Responsibility; *Preservice Teacher Education; Program Design; *School Law; *Teacher Attitudes; Undergraduate Study
IDENTIFIERS *Louisiana

ABSTRACT

With professional educators becoming the target of litigation in increasing proportions and most state legislatures preparing 15-20 new laws per year dealing with educational issues, it is essential that teachers become advised of the impact of law on their classrooms and their activities. This study surveyed a sample of 480 Louisiana teachers on their undergraduate education in school law. Teachers were surveyed at 12 locations. Of the sample, 30 percent reported advanced study towards a Master's degree. Ninety-five percent of the sample reported taking no course in school law as a proportion of their undergraduate preparation. The teachers were concerned with the following legal issues: privacy factors related to student records and general students conversations, child welfare, evaluation and tenure issues, and attendance regulations. Many respondents expressed a beginning interest in all legal areas of education. Members of the sample who were working on graduate degrees reported apprehensions about legal issues regarding privacy of student records, all areas of student discipline, tort, performance indicators, discipline issues, special education issues, false accusations, federal funds distribution, liability insurance, student/teacher rights, and accountability. The paper recommends that a specific course in educational law be added to the preparation curriculum for undergraduate and graduate educators. The survey instrument is appended. (Contains 11 references.) (JB)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED 389 695

EDUCATIONAL LAW: A RELEVANT COURSE FOR ALL TEACHER EDUCATION PROGRAMS

A Paper
By

David E. Gullatt, Ph. D.
and
John R. Tollett, Ed. D.
Assistant Professors
Northwestern State University of Louisiana
Natchitoches, Louisiana

presented at
the

LOUISIANA COUNCIL OF PROFESSORS OF EDUCATIONAL ADMINISTRATION

ANNUAL SPRING CONFERENCE

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

D. Gullatt

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☐ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

Natchitoches, Louisiana

March 29 - 30, 1995

SB 36339

BEST COPY AVAILABLE

Article Abstract:

Educational Law:

A Relevant Course for All Teacher Education Programs

Professional educators are becoming the target of litigation in increasing proportions. With most state legislatures preparing 15-20 new laws per year dealing with educational issues, it is essential that teachers become advised of the impact of law on their classrooms and their activities. Research data for this study has shown that a large portion of those teachers surveyed in the State of Louisiana did not perceive that they received adequate instruction in the law related to their vocation. Furthermore, specific courses related to teacher education and classroom issues are lacking. The recommendation is made that a specific course in educational law be added to the preparation curriculum for undergraduate and graduate educators.

Educational Law:

A Relevant Course for All Teacher Education Programs

A close look at most newspapers will reveal that we live in a litigious society. A closer scan of court proceedings will readily reveal an increase in settlements identified with educational matters. Some legal decisions are related to general control of the school curriculum such as how local education will be financed or where the next new school building will be located. Other decisions deal with issues that develop within the authority of the classroom teacher as he or she carries out the performance of duty as required by job assignment.

Presently in the State of Louisiana, the Board of Elementary and Secondary Education (BESE) has exacting certification standards and requirements for relevant professional and subject matter areas in which educators must exhibit competency to become certified as a teacher. The same type quality standards exist for professionals seeking administrative certification (Bulletin 746, 1985). One problem is envisioned, however, with the teacher certification model presently being used for certification of educators in the State. Very little or no room exists within present certification standards for a course in educational law for undergraduate or even graduate education majors. Currently, State certification standards require only the areas of administration and supervision to include

at least one course in American Public School Law. Where do educators receive this valuable knowledge?

The focus of this presentation is to spotlight the urgent need for educational law to be made a part of the standard curriculum of any undergraduate or graduate education major, regardless of desired certification. It is essential that all educators be made aware of the legal consequences of professional actions associated with their performance of any required duty or responsibility. Although data is presented from only Louisiana school locations for this article, an accurate generalization of experiences reported is possible in many other states in the nation.

Information will be presented representing the findings of a recent survey of several hundred teachers in 12 locations throughout the state. Each school site was chosen for its proximity (within 30 miles of a college/university that offered undergraduate and graduate education programs of study). Schools with varying organizational patterns were chosen. Information obtained from current teachers will be presented showing an overwhelming lack of perceived knowledge in educational law from preservice teacher education programs. This same lack of legal exposure will also be shown to exist in graduate preparation programs for teaching fields as opposed to administration, leadership, or supervision preparation. Areas of teacher concerns related

to legal issues as reported by the survey will also be presented.

Definitions of Terms

Teacher Education Majors: Undergraduate or graduate students enrolled in a particular course of study leading to a bachelor or higher degree with certification as a classroom teacher and emphasis in one or more academic subject matter areas or grade levels.

Administrative/Leadership/Supervision Majors: Graduate students enrolled in a course of study leading to one or more advanced degrees and certification as an administrator or supervisor.

Law: The term is generic and applies to the complete collection of rules which govern our society. Law may be either written or unwritten. Written law usually includes Congressional acts, state statutory enactments, city council ordinances, and board of education policies which result from action of the legislative branch of government. Common law, which is sometimes unwritten, dates back centuries and consists of court decisions and rulings, recognized customs, attorney general opinions, and proclamations or orders emanating from the executive branch of government. Taken together, all of these sources comprise what is generally referred to as "the law."

Preventive Law: The philosophy of approaching one's professional or personal dealings reflectively with certain

careful behavioral procedures utilizing a knowledge of the law. Attention is given to certain "reasonableness" standards for actions and non-actions taken in any given situation. The net effect of preventive law is to avoid litigation through thoughtful practice of the law.

Tort: A civil wrong independent of contract. It may be malicious and intentional, or it may be the result of negligence and disregard for the rights of others.

Negligence: The want of care or the lack of required care.

Assault: Threatening to strike or harm.

Battery: Beating and wounding, including touching or laying hold, however trifling, of another's person or clothes in an angry, insolent, or hostile manner.

Defamation: Scandalous words written or spoken tending to ruin reputation.

Malpractice: Non-performance of expected or advertised duties.

Plaintiff: Person filing a civil lawsuit.

Defendant: Person being sued and against whom recovery is sought in a civil suit, or the accused in a criminal case.

Historical Perspective

The constant interaction of law and education arises from a common concern on so many questions such as those that follow. Who should control the education of children? What and how should children be taught and by whom? Parents, educators, special interest groups, the state, the

national government--all have a voice on these questions. There is no simple, uniform process to decide which of these interests should prevail. In other words, the process of solving school disputes has a political dimension. With this environment of debate and application of the democratic process conditions exist for legal distinctness and, therefore, the opportunities for litigation. In addition, compounding the litigation situation is our unique national system of organization for public education which allows for differences in philosophy on many issues among states.

It is safe to say that pupils and/or their parents are suing educators for a variety of reasons including constitutional issues, as well as, torts such as negligence, assault and battery, defamation, and malpractice. It is true that educators have won a very large portion of the suits brought against them so it is not necessary for an educator to become gunshy of litigation. However, it is important for educators to become aware of requirements mandated upon them by the courts and legislatures of our country. At times, rules, regulations, restrictions and restraints may seem to a teacher to be optional when, indeed, these conditions are the legal obligation upon which the teacher will be held strictly accountable. In other words, the teacher may deem "standing on duty" in a particular assigned area of little importance since the "unrest of the moment" seems quieted. However, when the

above teacher is approached by a plaintiff's attorney in a court of law, that is, to deal with the issue of negligence such as not "standing duty" for the protection of his or her client, the issue is focalized and becomes crystal clear.

A number of changes have occurred over the last few years directly affecting litigation efforts toward educators. Some theories of the past are listed below along with more modern trends produced by legislation and the courts:

1. Around the turn of the century, money to support education was raised chiefly from the local level with some state support provided. Since little federal money was involved, the federal government had little to say about local school affairs. All that changed with the passage of huge grants from Washington. Along with the additional federal money came certain constraints that tended to limit the powers of local boards to act independently.

2. Until recently most states operated under a governmental immunity protection that held harmless local units of government, such as boards of education. This protection still remains in a few states, but the door has been opened to suits by individuals who are challenging what the state is doing to them under color of state law, custom, or practice.

3. In the past, school attendance was considered a privilege rather than a constitutional right. Furthermore,

working for the local school district was a privilege, and employees who asserted their right to continuing employment were told they had no constitutional right to work for the state. Court decisions are rapidly changing this philosophy.

4. Legislatures controlled earlier schools. The state's school code determined the law. If there was no specific prohibition of a certain action, then it was presumed that the practice was permitted. Now much of our educational law is judge-made, with the U.S. Supreme Court being the final arbiter of what local boards can and cannot do.

5. Finally, the Constitution has gone to school! The Supreme Court ruled in Tinker v. Des Moines Independent Community School District, 393 U.S. 503, Iowa 1969, that both teachers and students are persons under our Constitution, and that they "do not shed their constitutional rights at the schoolhouse gate" (Nolte, 1983, p. 4-5).

The above list gives some idea of the changing philosophy guiding the nation's public schools generated by recent court decisions. Control of schools and regulations dealing with employees and students now must be put to the test of reasonableness and must withstand examination from the legal sector.

Present Perspective

Today's schools function in the midst of a complex

environment, and it is difficult not to become aware of the wide range of legal issues that influence the lives of teachers, students, parents, and administrators. It is, in fact, increasingly clear that educators ignore the law at their peril. In 1975, the U.S. Supreme Court ruled that teachers and administrators may be held personally liable in money damages for violating students' clearly established constitutional rights (Fischer, 1995). Much of the law affecting school issues today is neither simple nor unchanging. Many of the cases affecting our schools are as difficult to resolve for lawyers and judges as they are for educators. This is because cases involving school law often do not address simple conflicts or right against wrong, but rather complex issues encompassing the conflicting interests of teachers, parents, administrators, and students.

There are four primary reasons for the importance of educational law being discussed in the context of graduate and undergraduate teacher education tracks. First, lawsuits in which a teacher is either a plaintiff or a defendant are proliferating at an alarming and troublesome rate. Second, few undergraduate teacher preparation programs include information about legal rights and professional responsibilities of teachers. Third, the teaching profession has been changed considerably by what the United States Supreme Court and other courts in our country have ruled regarding individual rights and school district

obligations. Finally, Congress and the fifty state legislatures are constantly enacting new legislation that impacts education in general and the role of teachers in particular. As a result of such new legislation, a huge volume of administrative rules and regulations are generated by federal and state agencies to "flesh out" the legislative mandates (Hartmeister, 1995, p. 6).

Most educational law decisions occur at trial court and administrative levels which occur beneath the state or federal appeals court level. Principals and teachers are most prone to be involved in the legal system through actions or inactions related to the performance of their duty (Johnson, 1994). Central office officials and superintendents are less likely to be involved in litigation as a result of their primary actions associated with performance of duty.

There is no published source that provides an accurate and detailed accounting of all litigation involving educators in the public schools. Based on the latest figures estimated by the Louisiana Association of School Executives, the number of suits brought against teachers and administrators has risen over 300% during the last ten years. Applying this trend to national figures, a conservative estimate of over 10,000 suits are filed nationally each year with a direct impact on educators (Musemeche, 1995).

Approximately one-third of the suits brought against educators are settled out of court in the U.S. because the teacher, coach, or administrator was so obviously at fault that insurance companies did not want to face juries. It is also estimated that another one-third of the suits brought against educators are routinely dismissed by trial judges as being trivial because those involved were obviously not at fault. About 33% of the 10,000 suits resulted in court trials annually (Hartmeister, 1995, p.14).

One such example of the 10,000 cases mentioned above involved an award of over $1 million dollars to a student and his father as a result of an accident during a physical education class. The inexperienced teacher taken to court in this case had been employed at the school only one day prior to the accident that left a student with a broken neck. The court assigned ninety percent of the negligence for the injury against the teacher (Larson v. Independent School District No. 314).

Why is the number of lawsuits involving teachers increasing? In a very real sense the legal problems facing teachers are the same problems shared by society at large. As society changes, so must laws change to accommodate newer values and to protect the rights of individuals. What was taken for granted for many years is no longer acceptable. Instead of expecting legislative bodies to implement change, people have turned to the courts--partly because it may be

quicker and partly because the model by which social change is to be handled has been radically revised. As the philosophy of our population changes over time, so does the approach to rational interpretation of freedom, liability, personal rights. Our courts carry this thinking into legal opinions as do our legislatures into statutes.

Since 1954 when the United States Supreme Court decided Brown v. Board of Education of Topeka, 347 U.S. 483 (1954), much of what is considered "school law" is of the judge-made variety. For example, between 1953 and 1969 the United States Supreme Court under Chief Justice Earl Warren decided approximately three dozen cases dealing with educational issues. Since then the Supreme Court under Chief Justices Warren Burger (1969 to 1986) and William Rehnquist (1986 to the present) has not been far behind in deciding a comparable number of cases which involved schools or educational issues. Most recently, a large number of United States Supreme Court decisions have focused on special education and religious issues involving such things as school prayer and public funding for parochial and private school programs. In addition, the Court has also looked at such varied issues affecting teachers and teaching as school-based search and seizure, employment rights, sexual harassment and free speech issues (Valente, 1994, pp 270-281).

Based on the above information concerning the movement of the courts toward involvement in the educational circles, it seems crucial that educators have avenues to learn more about legislation and court decisions that affect their destinies. Issues such as employment eligibility, employment status and tenure v. nontenure issues are seldom discussed in methods or content areas within teacher education curricula. Concerns about discharge, non-renewal of contract, and reassignment are relegated to the faculty lounge or school parking lot instead of the graduate education classroom. The foundations of education providing for self-analysis and self-assurance now are broadening far beyond the content area. Necessary background information should include a legal knowledge relevant to the profession chosen by the teacher--education.

Other professional content areas such as medicine and business provide courses in legal issues for their practitioners. It appears there is a need for education circles to coordinate efforts to provide appropriate knowledge and skills about the legal matters affecting teaching and learning in the classroom. Attorneys point out so-called atrocities of the school and classroom in courts of law daily. Perhaps, had the educator now involved in litigation encountered a significant background in education law as an undergraduate or graduate student, the legal issue would either have never evolved to litigation or never

occurred at all. Preventive law techniques can change the course of events in favor of a more positive and non-litigious solution. Teachers can only think reflectively on legal issues if they have a past experience on which to base the thought. There must be a foundation of knowledge on which to relate. If no background is present, then no basis for making decisions can be found. This leads to "shots in the dark" or "shooting from the hip" approaches to potentially volatile situations dealing with student/teacher rights, constitutional issues of freedoms, and tort.

Presently, state colleges and universities in Louisiana, and, for that matter, many other states, provide discussions on some legal issues during preservice training. However, a significant experience in school law supplied by a specific course dedicated only to teacher education issues within a plan of study leading to a bachelor's, master's, or specialist degree in a teaching field is missing. If classroom teachers wish to take a course in law, they must enroll in a class with those students aspiring to become administrators. Sometimes the above course will not be accepted for credit toward an approved degree plan or certification efforts toward a teaching field. With information presented showing an increased involvement in court action toward the classroom teacher, it is essential that educators become aware of trends of the court as a way to practice preventive law. This practice will assist

educators in staying out of the court room, avoiding embarrassing administrative hearings, and provide a more legal, ethical, and productive education for students.

Neither content nor methods classes inform teachers to any degree about preventive law. Considerable time, money, and effort is expended by someone aspiring to become a teacher, yet teachers may not be prepared for an event that could jeopardize an entire career. Topics such as reasonableness, in loco parentis v. state agent concept, fairness, common sense, potential problems, dangerous situations and conditions, and advise-seeking techniques are crucial for the teacher to take adequate precautions to avoid litigation.

Findings of the Research

Of the twelve locations used in this study, 480 teachers reported their experiences related to school law at the undergraduate level. Thirty percent of this number, or 144 teachers, reported advanced study toward a master's degree, plus 30 graduate hours, or specialist degree in a teaching field as opposed to an administration/supervision/leadership field. Eighty-nine percent of those responding, or 427 teachers, received their undergraduate training from colleges and universities in Louisiana; ninety-four percent of the graduate education teachers, or 135 educators, were enrolled or are presently enrolled in graduate studies in-state.

Ninety-five percent of the total teachers, or 456 educators, responding to the survey reported taking no course in school law as a portion of their undergraduate preparation. These teachers voiced concern over the following topics as beginning teachers: privacy factors related to student records and general student conversations, child welfare, evaluation and tenure issues, and attendance regulations. Many responding educators expressed a beginning interest in all legal areas of education.

Of the 144 teachers responding to questions about graduate preparation experiences, ninety percent, or 126 educators, reported not taking a course in school law as a part of their approved program of studies. These teachers reported that advisors did not recommend such a course for them to take. Some stated there was not enough room in the certification curriculum plan to allow for a course in educational law that is required for administration track educators to take.

Teachers working on graduate degrees reported apprehensions in the following areas related to school law issues: privacy of student records, all areas of student discipline, tort, performance indicators, discipline issues, 504 and special education issues, false accusations, federal funds distribution, liability insurance, student/teacher rights, and accountability.

It is noted that the more experienced, graduate student-educators have a refined sense of what area of law is most troubling to them. In addition, it is noted that these teachers want to know more about rights for the students as well as themselves. It is also evident that most colleges and universities do not have courses designed in school law for undergraduate education majors and most graduate students do not take educational law as a part of their plan of studies. Another finding was that teachers having undergraduate or graduate preparation out-of-state generally did not have exposure to educational law topics either. Finally, teachers do have a number of timely apprehensions concerning legal issues in the performance of their duties.

Recommendations

Teachers, like other American citizens, are expected to know and abide by the law. Courts will not accept ignorance of the law as an excuse or as a defense. This is not because all citizens already know the law, but rather because there is no way to refute such a claim. In light of the above information the following recommendations seem appropriate for the enlightenment and general education of classroom teachers at both the undergraduate and graduate levels.

1. A general course in educational law should be taught at the undergraduate level to prepare new teachers with the

duty of responsibility necessary of him or her as an educator. This course would acquaint a prospective teacher with his or her rights as a professional educator and also help acquaint the professional with his or her job obligations.

2. A more specific course in educational law should be taught at the graduate level with particular interest being paid to the teacher's area of responsibility. A clear focus would be possible since those enrolled in the course would have actual experience in the classroom.

3. Periodic professional development workshops and inservice meetings need to be designed by universities and legal authorities in collaboration with the local educational authorities to update and strengthen both the new and experienced teachers' knowledge of current educational law. This is necessary due to the large amount of new legislation presently being enacted annually by the various fifty states and as a result of ever increasing court decisions affecting the schools.

4. Each school should designate a resource teacher interested in educational law to be responsible for collecting professional information related to school law and making this information available to the entire faculty. In addition, this person should have the opportunity to attend a legal workshop at least once a year to obtain and disseminate information within the school. This contact

person should also be willing to make school presentations to the faculty on legal issues.

Summary

Professional educators are becoming the target of litigation in increasing proportions. There is not enough time in the day or school year for present administrators to conduct ample professional development activities to inform teachers about educational law. The applicable educational topics, which may be chosen for faculty study, could be deemed too numerous. In addition, important issues may be prone to specific minuscule analyzation in an isolated situation.

With most state legislatures preparing 15-20 new laws per year dealing with educational issues, it is essential that teachers become advised of the impact of law on their classrooms and their activities. Attempts must be made to develop an informed network or web of activities in order that our educators are kept currently informed of what is expected of them as professionals. Accountability can be enforced more effectively if this principle is followed.

The price we must pay for our freedom is eternal vigilance against breaking the law. The first duty of every citizen is to obey the law. Considering the tremendous influence teachers have over their students and the malleability of the young lives entrusted to their care,

teachers have an amplified duty not only to know the law, but also to abide by it at all times. In closing, the question posed for the reader is, "Are educators receiving a foundational knowledge base in educational law in order to make correct decisions with regard to legal implications of actions taken in the performance of their duties?" Research data for this study has shown that a large portion of those teachers surveyed did not perceive that they received adequate instruction in the law related to their vocation. Furthermore, specific courses related to teacher education and classroom issues are lacking.

References

Alexander, Kern and Alexander, M. David. (1992). American public school law. St. Paul, MN: West Publishing Company.

Bulletin 746: Louisiana standards for state certification of school personnel. (1985). Baton Rouge, LA: Louisiana Department of Education.

Connors, Eugene T. (1983). Educational tort liability and malpractice. Bloomington, IN: Phi Delta Kappa.

Deskbook encyclopedia of american school law. (1995). Data Rosemount, MN: Research, Inc.

Fischer, Louis; Schimmel, David; and Kelly, Cynthia. (1995). Teachers and the law. (Fourth Edition). White Plains, NY: Longman.

Hartmeister, Fred. (1995). Surviving as a teacher: The legal dimension. Chicago, IL: Percept Press.

Johnson, James A. (1994). The foundations of American education (9th ed.). Boston: Allyn and Bacon.

Larson v. independent school district no. 314. (1980). 289 N.W. 2d. 112, Minn.

Musemeche, Richard. (1995). Letter responding to requested data from Louisiana Association of School Executives. Dated February 24, 1995.

Nolte, M. Chester. (1983). How to survive as a principal: The legal dimension. Chicago, IL: Teach'em.

Valente, William. Law in the schools. (1994). New York, NY: Merrill.

APPENDIX A

School Law Opinion Questionnaire

==========

The following questionnaire is designed for voluntary, anonymous participation. Please contact David Gullatt, Northwestern State University, at 318-357-4187 for summary results. Thanks!

==========

1. Did you take a course in Public School Law as an undergraduate education major as a part of your teacher preparation program?

_____ Yes No _____

2. Was such a course offered within the college/university as an elective for you to have taken as an undergraduate had you wanted to do so?

_____ Yes No _____

3. Did an advisor suggest that you take the course?

_____ Yes No _____

4. What college/university did you attend for your undergraduate degree?

_____

5. What area(s) of school law did you feel you were not knowledgeable enough about as a beginning educator?

_____

_____

==========

==========

6. Are you working toward or have an advanced degree in education (Note: A teaching emphasis area and not administration/supervision)?

_____ Yes No _____ Note: If No, skip to # 10.

7. Which university did or are you now attending? _____

8. Did you take a course in Public School Law as a graduate student as part of your masters or specialist work in teaching certification (Note this is for a teaching degree and not for certification as an administrator/supervisor)?

_____ Yes No _____

9. Did your graduate advisor suggest you take the course?

_____ Yes No _____

10. What area(s) of school law causes you the most concern now as a practicing educator?

==========